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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/282,157	03/31/1999	SAM E. KINNEY, JR.	046700-5005	8245

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EXAMINER

BASHORE, ALAIN L

ART UNIT	PAPER NUMBER
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3624

DATE MAILED: 10/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n N .

09/282,157

Applicant(s)

KINNEY, JR. ET AL.

Examin r

Alain L. Bashore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-60, 69 and 71-74 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-60, 69, 71-74 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 19.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-20, 69, and 71 are rejected under 35 U.S.C. 101 as non-statutory. The method claims as presented do not claim a technological basis in the body of the claim. Without a claimed basis, the claim may be interpreted in an alternative as involving no more than a manipulation of an abstract idea and therefore non-statutory under 35 U.S.C. 101. In contrast, a method claim that includes in the body of the claim at least one structural / functional interrelationship which can only be computer implemented is considered to have a technological basis [See Ex parte Bowman, 61 USPQ2d 1669, 1671 (Bd. Pat. App. & Inter. 2001) – used only for content and reasoning since not precedential].

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4, 6-7, 9-14, 16-17, 19-24, 26-27, 29-34, 36-37, 39-46, 48-49, 51-56, 58-59, 69, and 71-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausubel (383) in view of Popolo.

Ausube (383) discloses a method, system, and computer program product on computer useable medium of conducting an electronic online auction between a plurality of potential bidders, the plurality of potential bidders competing for a lot (i.e. mutple objects together; col 4, lines 29-39) having at least one product (col 2, lines 51-67; col 3, lines1-67; col 4, lines 1-29). Participants of the online auction include a sponsor and at least two potential bidders competing for award of a lot (col 3, lines 1-5). Multiple bid information is received for a lot from multiple bidders (col 2, lines 61-62).

The received first bid information represents a first bid that is originally defined in a context of the first bidder (col 4, lines 5-10). Information reflective of the submitted first bid is stored, the stored information enabling a relative comparison of submitted bids (col 6, lines 11-27). Since multiple bidders and multiple bids are transmitted, and second bid information is transmitted.

Ausubel (383) discloses performing a non-linear transformation (col 8, lines 1-19) using a lookup table (col 8, line 5). Since Ausubel (383) teaches performing his demand curve using a look-up table with a non-increasing constraint (i.e. linear), there

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is disclosed performing a combination of linear, non-linear, and look-up table transformations simultaneously (col 8, lines 15-19).

Ausubel (383) discloses functional equivalence to "common competitive basis" because he teaches basis for auctions that require common-value component of valuation and the competitive nature of bids in general (col 1, lines 22-25).

Ausubel (383) does not explicitly disclose:

enabling a second bidder to view or display a bid originally defined in a context of said first bidder in said context of said second bidder as a relative comparison; and

enabling a bidder to view or display a bid originally defined in a context of a bidder in a context of the buyer;

generating detransformed bid information not previously transformed which is transmitted to a second bidder;

performing a linear transformation having at least one of a multiplicative adjustment and an additive adjustment; and,

a received bid price (untransformed bid information), specified in a local currency of said first bidder which is converted (generating a transformed bid using first bid information) to yield a base currency bid price.

Popolo discloses a received bid price (untransformed bid information), specified

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in a local currency of said first bidder which is converted (generating a transformed bid using first bid information) to yield a base currency bid price (col 4, lines 20-45). There is also disclosed enabling a bidder to view or display a bid originally defined in a context of a bidder in a context of the buyer (col 2, lines 4-12). A second bidder may view or display a bid originally defined in a context of said first bidder in said context of said second bidder as a relative comparison (col 14, lines 50-54; col 15, lines 1-60; col 16, lines 1-24). Detransformed bid information not previously transformed is transmitted (col 14, lines 18-25).

It would have been obvious to one with ordinary skill in the art to include a received bid price (untransformed bid information), specified in a local currency of said first bidder which is converted (generating a transformed bid using first bid information) to yield a base currency bid price to Ausubel (383) because Popolo teaches convenience for comparison purposes (col 2, lines 2-7).

It would have been obvious to one with ordinary skill in the art to enabling a second bidder to view or display a bid originally defined in a context of said first bidder in said context of said second bidder as a relative comparison to Ausubel (383) because Popolo teaches that bidders may require changing bids (col 15, lines 24-27).

It would have been obvious to one with ordinary skill in the art to include

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enabling a bidder to view or display a bid originally defined in a context of a bidder in a context of the buyer to Ausubel (383) because of what is taught by Popolo. Popolo teaches that context definition is important to reduce time and expense by increasing coordination between buyers and sellers. (col 1, lines 14-67; col 2, lines 1-12).

It would have been obvious to one with ordinary skill in the art to transmit detransformed bid information not previously transformed to Ausubel (383) because Popolo teaches bidders may by-pass normal procedures to present bid information for consideration (col 14, lines 20-22).

5. Claims 5, 15, 25, 35, 50 and 60 are rejected under 35 U.S.C. 103(a) as unpatentable over Ausubel (383) in view of Popolo as applied to claims 1-4, 6-7, 9-14, 16-17, 19-24, 26-27, 29-34, 36-37, 39-46, 48-49, 51-56, 58-59, 69, and 71-74 above, and further in view of (Walsh and Walker et al (207)).

Ausubel (383) in view of Popolo does not disclose transforming a received price per physical measure of weight or volume of coal into a standardized unit of value to the buyer of coal using multiplicative adjustments and additive adjustments based upon one or more of the thermal content, percentage sulfur, percentage ash, percentage water, and hardness of coal of said first bidder.

Walsh discloses coal and its intrinsic value for low ash and sulphur content (col 1, lines 1-49).

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It would have been obvious to one with ordinary skill in the art to include transforming a standardized unit of value to the buyer of coal based upon percentage sulfur of Walsh to Ausubel (383) in view of Popolo because of what is taught by both Walsh and Walker et al (207). Walker et al (207) teaches coal as a commodity which can be auctioned (col 2, line 54) and Walsh teaches a basis to evaluate intrinsic value of coal.

Response to Arguments

6. Applicant's arguments filed 8-15-03 have been fully considered but they are not persuasive.

The recitation containing technical basis must be within the body of the claim not the preamble. The claims argued at court in the State Street decision had a technical basis.

The term "context" is taken in the broadest definition of the term to mean something viewed in light of something else. Utilizing the broadest definition of the term, any review of a past bids (by others) is defined in "context" of the second bidder when viewed by a second bidder.

Both Ausubel and Popolo are within the purview of the auction art.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

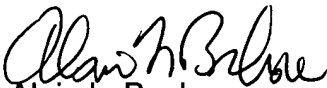
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alain L. Bashore whose telephone number is 703-308-1884. The examiner can normally be reached on about 7:30 am to 5:00 pm (Alternate Fridays Off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on 703-308-1065. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-1113.


Alain L. Bashore
October 20, 2003


HANI M. KAZIMI
PRIMARY EXAMINER